

FILED

OA 91 Criminal Complaint

United States District Court

MAR 16 2009

NORTHERN

DISTRICT OF

CALIFORNIA

RICHARD W. WIERING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIAUNITED STATES OF AMERICA
V.
JUSTIN SMITH**CRIMINAL COMPLAINT**

Case Number: _____

EMC**3 09 70265**

(Name and Address of Defendant)

I, the undersigned complainant being duly sworn state that the following is true and correct to the best of my knowledge and belief. On or about January 23, 2009 in Del Norte County County, in the Northern District of California defendant(s) did,

(Track Statutory Language of Offense)

knowingly and intentionally possess a firearm, in and affecting interstate commerce, after having sustained a felony conviction punishable by a term of imprisonment exceeding one year,

in violation of Title 18 United States Code, Section(s) 922(g)(1)

Maximum Penalties: 10 years imprisonment, \$250,000 fine; 3 years of supervised release; \$100 special assessment

I further state that I am a(n) Special Agent ATF and that this complaint is based on the following facts:
See Affidavit of Inspector Thomas Cleary, attached and incorporated herein by reference.

Continued on the attached sheet and made a part hereof:

☒ Yes☐ No

Approved

As To Katherine B. Dowling
Form: AUSA

Name Signature of Complainant

Sworn to before me and subscribed in my presence,

Date

Edward M. Chen

United States Magistrate Judge

Name & Title of Judicial Officer

at

City and State

Signature of Judicial Officer

AFFIDAVIT

I, Thomas M. Cleary, being duly sworn, depose and state that:

I am a Special Agent (SA) employed by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). I have been a Special Agent for the Bureau of Alcohol, Tobacco, Firearms, and Explosives since May, 1999. I am a graduate of the Federal Law Enforcement Training Center's Criminal Investigator Training Program and the ATF National Academy's New Agent Training Program where I received training in Federal Firearms Violations. I am currently assigned to the ATF San Francisco Metro Field Office as the Violent Crime Coordinator. Additionally, I am assigned as the ATF HIDTA representative to the California Department of Justice, Bureau of Narcotic Enforcement (BNE), Gang Suppression Enforcement Team (GSET). I have worked on numerous investigations, both state and federal, involving the illegal possession/trafficking of firearms.

This affidavit is in support of a criminal complaint charging Justin Jeremiah SMITH (hereinafter referred to as "**SMITH**") with violations of 18 U.S.C. § 922(g)(1), felon in possession of a firearm. The information contained herein is based on my review of the reports and documents in the case, my interviews of witnesses, conversations with other law enforcement personnel, and my own personal knowledge.

PRIOR FELONY CONVICTION STATUS

1. On or about January 29, 2009, I obtained and reviewed a copy of the California Law Enforcement Telecommunications System (CLETS) criminal history printout for **SMITH**:

- (a) On or about June 27, 2007, **SMITH** was convicted in San Diego County Superior Court of a felony violation of California Penal Code Section 368(B)(1), Cause Harm to an Elder or Dependant Adult.
 - (b) On or about July 30, 2007, **SMITH** was convicted in San Diego County Superior Court of a felony violation of the California Vehicle Code Section 2800.4, Evade Peace Officer, Wrong Way Driver.
- 2. In support of the above convictions, I have also obtained and reviewed Exemplified Documents from the California Department of Justice regarding Justin SMITH's two felony convictions.

POSSESSION OF FIREARMS

- 3. On January 23, 2009, Deputies of the Del Norte County Sheriff's Office (DNCSO) received information that Justin **SMITH** would be traveling from Brookings, Oregon to San Diego County, California. Deputies were further advised that **SMITH** was a California Department of Corrections Parolee and that he may be in possession of a firearm and traveling with his wife, Tambrie Smith. Justin and Tambrie Smith were supposed to be driving a red Ford Expedition and traveling with a U-Haul truck containing their belongings.
- 4. DNCSO deputies set up surveillance at the Oregon-California State line. At about 1220 hours, deputies saw Justin and Tambrie Smith driving a red Ford Expedition cross the state line into California and were being followed by a U-Haul truck. Justin and Tambrie Smith were stopped briefly at the state line, at which time, DNCSO Detective Bob Barber positively identified Justin SMITH exit the front passenger side of the Ford Expedition and speak with a state inspector. Detective Barber also saw the female driver of the Expedition, later identified as Tambrie Smith.

5. Both the Ford Expedition and U-Haul truck traveled together southbound on Highway 101. A traffic stop was conducted on the Ford Expedition just prior to the vehicle entering Crescent City, California. A marked police vehicle conducted the traffic stop on the Ford Expedition at which time the U-Haul truck also pulled over and stopped.
6. The driver of the Ford Expedition was identified as Tambrie Smith and the front passenger was identified as California Parolee Justin Smith. The driver of the U-Haul was identified as Andrew Paullin.
7. Detective Barber noted that Justin **SMITH** had a set of Nazi "SS" lightning bolts tattooed on his neck and the number "8" tattooed on each calf. The two number "8's" represent the eighth letter of the alphabet "H" or "Heil Hitler." Detective Barber also noted a set of Nazi "SS" lightning bolts on Tambrie Smith's neck.
8. Andrew Paullin, driver of the U-Haul truck, stated that he was related to Tambrie Smith and that he had been hired by Justin and Tambrie Smith to drive the U-Haul to San Diego. Paullin stated that Justin **SMITH** paid cash to rent the U-Haul, and that the items in the locked U-Haul belonged to Justin and Tambrie Smith. Paullin said he used "walkie-talkies" to communicate with Justin and Tambrie Smith in the Ford Expedition. Paullin said that Justin **SMITH** had shown him a rifle in a large black gun case, prior to departing Brookings, Oregon. Paullin said that he saw Justin **SMITH** load the rifle into the U-Haul truck.
9. The overhead door to the U-Haul truck was locked with a "Ruger" gun lock. Paullin did not have a key to the gun lock to open the U-Haul truck. Paullin said that Justin **SMITH** placed the lock on the overhead door of the U-Haul truck. Detective Barber located the key to the lock inside the pants pocket of Justin **SMITH**.

10. During the search of the U-Haul truck, deputies located fifteen (15) firearms and a large amount of ammunition. Additionally, approximately two (2) pounds of marijuana were found in the U-Haul truck. Tambrie Smith advised the deputies that she did not load the firearms into the U-Haul truck with the exception of a Ruger 10/22 Charger pistol.
11. Deputies located a receipt for an Intratec Tec-9 pistol which was found in the locked portion of the rented U-Haul truck. The receipt showed that Tambrie Smith purchased the Intratec Tec-9 in Brookings, Oregon. Subsequently, it was determined that Tambrie Smith used Justin SMITH's debit card to purchase this firearm. Tambrie Smith signed her name on the debit card receipt.
12. During the search of the Ford Expedition, deputies recovered marijuana in a plastic bag that had been concealed behind the glove box. In the center console of the Ford Expedition, deputies located a trigger-mechanism for a Ruger model 10-22 rifle. A Ruger 10/22 rifle without a trigger-mechanism was located in the locked portion of the rented U-Haul truck.
13. Tambrie Smith further stated that she did purchase the Intratec Tec-9 pistol and that she knew that Justin SMITH was a convicted felon. Tambrie Smith also stated that she knew that Justin SMITH would have access to the firearm after she purchased it. Tambrie Smith stated that she did load one firearm into the U-Haul truck, identified as a Ruger pistol.
14. Both Justin and Tambrie Smith were arrested for numerous state charges. During the booking process, Justin SMITH told Detective Barber that Tambrie had "nothing to do with this," and that "all those guns are mine." Justin SMITH said the firearms had belonged to his father and he was moving them back to San Diego.

INVESTIGATION OF FIREARMS

15. During the week of February 9th through the 13th, Detective Barber and I interviewed 3 federally licensed firearms dealers located in Brookings and Medford, Oregon. The firearms dealers are identified as Loring's Lighthouse Sporting Goods, Chetco Trader and Valley Pawn and Trading. All three dealers described instances where Justin and Tambrie Smith entered their businesses and purchased firearms. In total, seven (7) firearms were purchased from the three dealers. Tambrie Smith purchased the firearms from Loring's Sporting Goods and Valley Pawn and Trading using Justin SMITH's debit card. Investigation is ongoing to determine if Tambrie Smith used Justin SMITH's debit card to purchase three (3) firearms from Chetco Trader. In all instances, Justin SMITH handled the firearms within the stores prior to them being purchased. These purchases occurred between September 2008 and January 2009.
16. Of the fifteen (15) firearms recovered from Justin SMITH, at least six (6) previously belonged to either Justin SMITH or his father, Raun Smith (deceased 6/4/08). At least six (6) of the firearms were purchased by Tambrie Smith, using Justin SMITH's debit card.

DEL NORTE COUNTY JAIL CALLS

17. As of February 25, 2009, Detective Barber has obtained approximately 63 individual jail calls made by Justin SMITH. Detective Barber has only reviewed a "few" of the calls. A synopsis of the reviewed calls is as follows:
- On January 23, 2009, Justin SMITH called his grandmother and told her that he had been arrested. He stated that, "they searched the U-Haul and found the 50-caliber and all the guns and some weed, 2-pounds worth." He said, "if the U-Haul would have kept going then they wouldn't have found nothing." Justin SMITH further told his grandmother, "they're my guns, they're my father's guns and the

pot that I traded for the quad.” Justin SMITH further said that the firearm that Tambrie is charged with, “we purchased together.”

18. Investigation is ongoing to review additional jail call made by both Justin and Tambrie SMITH.

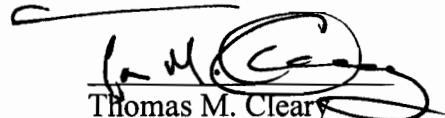
INTERSTATE COMMERCE OF FIREARMS

19. I have received specialized training in determining the identity and origin of firearms. I have completed ATF’s Basic and Advanced Interstate Nexus Training. The firearms seized on January 23, 2009 from Justin SMITH originated in the State of Oregon. DNCSO Detective Bob Barber saw the U-Haul truck containing the firearms cross the California-Oregon state line. The U-Haul truck remained under surveillance until it was stopped prior to entering Crescent City, California.
20. In addition, I have researched the fifteen (15) firearms seized on January 23, 2009 from Justin SMITH. All of the firearms were manufactured outside the State of California, with the exception of an Arcadia Machine and Tool (AMT) rifle, serial number WTM-1. AMT firearms are manufactured in the State of California. This AMT rifle, along with the other fourteen (14) firearms, did affect interstate commerce when it (they) crossed the state line into California from Oregon.

CONCLUSION

Based on the foregoing evidence, there is probable cause to believe that on January 23, 2009 the defendant, Justin **SMITH**, after having sustained a felony conviction punishable by a term of imprisonment exceeding one year, did knowingly and intentionally possess a firearm, in and affecting interstate commerce, in violation of Title 18, United States Code, Section 922(g)(1).

I declare under the penalty of perjury that the foregoing statements are true and correct to the best of my knowledge.


Thomas M. Cleary
Special Agent

Subscribed and sworn to before me this

16th Day of March 2009, in San Francisco, California.


UNITED STATES MAGISTRATE JUDGE EDWARD M. CHEN